

7 November 03
TESTE: JILLIE M. HART, CLERK 11:40am
15yr D.C.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

COMMONWEALTH OF VIRGINIA)

v.)

CR 03-3089, CR03-3090 & CR03-3091

LEE BOYD MALVO)

RESPONSE TO MOTION TO DISMISS
COUNT I OF THE INDICTMENT

The defense motion is based upon a series of non sequiturs that would drive any decent respectable logic professor into a dissociative state. First of all, this court did not, on July 2, 2003, determine that all the citizens of Fairfax County lived in fear in October 2002. There is no evidence now, nor was there any in July 2003, which would support such a proposition.

Paragraph 3 of the motion correctly states the court's perception that "many citizens" in the Washington/Richmond corridor lived in fear in October 2002. The court in its opinion letter of July 2 simply concluded that a fair trial could not be had in Fairfax County. It made no finding, nor could it, that all of the citizens of Fairfax were biased against Lee Boyd Malvo.

The defense motion here is similar to the motion in Bell v. Commonwealth, 264 Va. 172, 191 (2002) where the contention was made that because of supposedly prejudicial flyers in the courthouse area, the indictment should be quashed. There as here, the motion was based on pure speculation and the Virginia Supreme Court so found. Here the speculation is that the grand jurors were among those living in fear. As in Bell, there is no evidence to support it.

We ask that the motion be denied.

Respectfully submitted,

ROBERT F. HORAN, JR
Commonwealth's Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Motion was mailed, postage prepaid, and faxed to Michael Arif, Counsel for Defendant, 8001 Braddock Road, # 105, Springfield, Virginia 22151 and Craig Cooley, Counsel for the Defendant, 3000 Idlewood Avenue, P.O. Box 7268, Richmond, Virginia 23221 this 7th day of November, 2003.

ROBERT F. HORAN, JR
Commonwealth's Attorney